IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 15942 of 2004

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Between:

N.V. Subba Rao S/o Venkata Subbaiah
Kovvur Gram Panchayat, Kandukur Mandal Prakasam

District

..... PETITIONER

AND

-

1 The Divisional Panchayat Offier, Kandukur, Prakasam

District
2 The District Panchayat Officer, Ongole, Prakasam

District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus to declaring the action of the respondents by issuing the enquiry proceedings Roc. No. 133/2004 dt.30-8-2004 in the notice as illegal and unenforceable under the law and consequently set a side the enquiry proceedings in Roc. No.133/2004 dt.30-8-2004.

Counsel for the Petitioner: MR.MADALANARSINGA RAO

Counsel for Respondents: GP FOR PANCHAYAT RAJ & RURAL

DEVELOPMENT

The Court at the admission stage made the following :

ORDER:

It is stated that the petitioner was elected as Sarpanch of Gram Panchayat of Kovvur Village and after completion of his tenure he was appointed as Person In-charge of Kovvur Gram Panchayat through proceedings No.2881/95 dated 7-3-1996 of the first respondent. Since then he has been discharging his duties as such. While so without removing the petitioner one Mr. K. Vasanta Rao was appointed as Person in-charge by proceedings dated 8-7-2004. The said appointment was challenged by the petitioner in writ petition No.13079 of 2004 and the same was set aside on 27-7-2004 with a direction to the respondents to allow the petitioner to continue as Person In-charge of Kovvur Gram Panchayat. Since the orders of this court are not implemented the petitioner filed C.C.No.1016 of 2004. Pending the C.C. petitioner was allowed to continue as Person In-charge of Kovvur Gram Panchayat.

Thereafter, on the allegations made by some of the villagers including that of K. Vasanta Rao, the first respondent issued impugned notice dated 30-8-2004 stating that he will make an open enquiry on 31-8-2004 at 11.a.m. on the allegations made by the villagers in their representation about the Village Administration, and calling upon the petitioner and the persons who made allegations to be present on the said date for facilitating him to conduct enquiry. Questioning the same, the present writ petition is filed.

Learned counsel for the petitioner contends that in the absence of any power vested with the first respondent to conduct open enquiry under the provisions of the A.P. Panchayat Raj Act, 1994, (for short 'the Act'), issuing notice stating that he will conduct public enquiry on the allegations levelled against the petitioner is arbitrary, illegal and without jurisdiction. He further contends that the petitioner was not informed about the allegations made and even about the enquiry to be held on 31-8-2004 at 11 a.m., and subsequently the first respondent deferred the enquiry to 8-9-2004 and informed the petitioner through impugned notice dated 30-8-2004, which is in violation of the principles of natural justice, and sought for a direction to set aside the impugned notice.

Heard learned counsel for the petitioner and learned Government Pleader for Panchayat Raj and Rural Development.

Sub-section (6) of Section 44 of the Act reads as under:

> Section 44 (6):- The Commissioner or any officer or any person whom the Government or the Commissioner may empower in this behalf may –

a. direct the Gram Panchayat to make provision for and to execute or provide any public work or amenity or service of the description referred to in Section 45;

b. call for any record, register or other document in the possession or under the control, of any Gram Panchayat or executive authority;

c. require any Gram Panchayat, or executive authority to furnish any return, plan, estimate, statement, account or statistics;

d. require any Gram Panchayat, or executive authority to furnish any information or report on any matter connected with such gram panchayat;

e. record in writing for the consideration of any gram panchayat or executive authority any observations in regard to its or his proceedings or functions.

As can be seen from sub-section (6) of Section 44 of the Act, the Commissioner or any officer or any person whom the Government or the Commissioner may empower in this behalf can issue directions as enunciated in Clauses (a) to (e). But this section does not contemplate open enquiry.

Since it is not in dispute that the first respondent is a person who is appointed to supervise the administration of all the Gram Panchayats within his jurisdiction, he can exercise such of the powers exercisable by the Commissioner under the Act and it is open for him to call for any record, register or other documents under the control of the Gram Panchayat, with regard to any of the matters connected with the administration of the Gram Panchayat and to conduct enquiry, when allegations are received from the public. The other submission made by the learned counsel that the allegations made against the petitioner were not made known to the petitioner and, therefore, no enquiry can be proceeded with, cannot be accepted for the reason that the enquiry now contemplated by the first respondent is only a preliminary enquiry to know the truth or otherwise of the allegations made in the complaint made to him. In the preliminary enquiry, if it is found that there is some truth in the said allegations, it is needless to say that he is under obligation to take appropriate action only after issuance of notice to the petitioner and calling for his explanation. In view of the same, the impugned notice issued by the first respondent for conducting public enquiry does not suffer from any infirmity to be interdicted by this court at this stage.

Accordingly, the Writ Petition is dismissed at the admission stage.

A. Gopal Reddy, J.

7th September, 2004.

Js.

To

1 The Divisional Panchayat Offier, Kandukur, Prakasam

District
2 The District Panchayat Officer, Ongole, Prakasam

District

3 2 CCs to G.P. for Panchayat Raj and Rural

Development, High Court Buildings, Hyderabad.

4 2 CD copies.